

**SUMMONS ISSUED**

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ JAN 11 2012 ★

LONG ISLAND OFFICE

-----X  
RONALD RUSSO

Plaintiff,

COMPLAINT AND  
DEMAND FOR JURY TRIAL

-against-

**CV - 12 0138**

RUBIN & ROTHMAN LLC

Defendant.  
-----X

**WEXLER, J.  
TOMLINSON, M**

Plaintiff by and through his attorney Kleinman LLC, complaining of the Defendant,  
respectfully alleges and shows to the Court as follows:

**INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692 et seq. (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive and unfair practices violation of the New York State General Business Law as well as the torts of negligence and gross negligence.

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 15 U.S.C. section 1692k(d), 28 U.S.C. section 1337 and supplemental jurisdiction exists for State law claims pursuant to 28 U.S.C. sections 2201 and 2202 and New York State law. Venue in this District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

**PARTIES**

3. Plaintiff Ronald C. Russo Jr. is a natural person residing in Suffolk County, New York.
4. Plaintiff is a “consumer” as defined by 15 U.S.C. section 1692(a)(3).
5. Defendant Rubin & Rothman LLC is a Domestic Registered Limited Liability Company. Its principal executive office is located at 1787 Veterans Highway, Islandia, New York. Defendant attempts to collect debts alleged to be due another.

**FACTUAL ALLEGATIONS**

6. On or about February 17, 2011, Defendant Rubin & Rothman LLC sent an initial debt collection letter to Ronald Russo. The Rubin & Rothman letter stated that, “[A]t this time, no attorney with this firm has personally reviewed the particular circumstances of your account.” The Creditor was identified as Citibank (South Dakota), N.A. **Exhibit A.**
7. On February 24, 2011, Ronald Russo disputed the validity of the Citibank debt, requested an attorney review the particular circumstances of the account and indicate whether the Citibank account was subject to Arbitration. **Exhibit B.**
8. On March 24, 2011, Rubin & Rothman, LLC provided Mr. Russo with account statements but failed to address whether or not an Arbitration Clause governed

the account at issue and did not indicate whether an attorney had reviewed the account.

**Exhibit C.**

9. On April 1, 2011, Ronald Russo again requested that an attorney review the account at issue and identify whether an arbitration clause governs the account at issue. **Exhibit D.**

10. On October 12, 2011, Rubin & Rothman sent a letter to Russo which included a Filing Fee and Process Service Charges of \$140.00. **Exhibit E.**

11. On October 18, 2011, Hon. Madeleine A. Fitzgibbon, Supervising Judge, District Court of the County of Suffolk, First District Court, Ronkonkoma scheduled a Status Conference concerning Index Number CEC 3336-11 for December 9, 2011 as a result of the absence of an Affidavit of Service. **Exhibit F.**

12. On November 22, 2011, Citibank, N.A., by and through its counsel, Rubin & Rothman, LLC filed a complaint against Ronald Russo, Index Number CEC-11 012515 while CEC-3336-11 was pending. **Exhibit G**

13. On December 1, 2011, the Honorable Philip Goglas, Dismissed the complaint in Citibank (South Dakota) N.A. v. Ronald Russo for failure to serve process within 120 days. **Exhibit H.**

**CAUSES OF ACTION UNDER THE FDCPA**

14. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

15. Defendant violated 15 U.S.C. sections 1692(d), 1692e, 1692e(3), 1692e(10), 1692f(1), 1692g, and 1692g(b).

16. Defendant Rubin & Rothman violated 15 U.S.C. § 1692d in that it engaged in conduct the natural consequence of which is to harass, oppress and/or abuse the Plaintiff. Defendant's actions include but are not limited to filing two simultaneous complaints against Russo absent attorney review.

17. Defendant violated 15 U.S.C. sections 1692e, 1692e(3), 1692e(5), 1692e(10) and 1692g in that defendant used false, deceptive and or misleading representations and/or means in connection with the collection of a debt, by claiming that it will provide verification of disputed debt, when in fact it ignores basic requests for attorney review and Arbitration information, which would be detrimental to Rubin & Rothman.

18. Defendant violated 15 U.S.C. § 1692d and 1692e(10), in that Russo was compelled to respond to a lawsuit which Rubin & Rothman LLC did not serve.

19. Defendant violated 15 U.S.C. section 1692g(b) by filing two actions on timely disputed debts absent verification of the debt.

**CAUSES OF ACTION UNDER NEW YORK GENERAL BUSINESS LAW**

20. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.
21. Defendant violated New York General Business Law section 349 et seq. Defendant's violations include, but are not limited to filing an actions against Russo absent an attorney personally reviewing the particular circumstances.
22. Plaintiff suffered actual damages as a result of the Defendant's actions.

**NEGLIGENCE AND GROSS NEGLIGENCE**

23. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.
24. Defendant's actions and omissions as described herein constitute negligence in that Defendant owed Plaintiff a duty of reasonable care in the collection of alleged debt, said duty was breached and said breach was the proximate cause of damages suffered by Plaintiff.

25. Defendant's actions and omissions described herein constitute gross negligence in that Defendant owed and owes Plaintiff a duty of reasonable care in the collection of the alleged debt, said duty was breached, said breach was the proximate cause of damages suffered by Plaintiff and Defendant's actions and omissions demonstrate a want of scant care and indifference to the rights of Plaintiff. Defendant's actions were willful, malicious and reckless in view of defendant's statement that the Summons and Complaint is not frivolous. Defendant's actions were highly unreasonable and demonstrate an extreme departure from ordinary care.
26. Plaintiff is entitled to punitive damages for the actions and omissions of the Defendant as described.

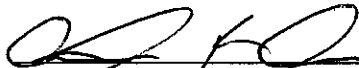
### **DAMAGES**

27. Because of the acts and omissions of Defendant as described, the Plaintiff has suffered marital discord, financial loss, mental anxiety, emotional suffering, worry, loss of appetite, humiliation, sleeplessness and mental distress. Further, Defendant's acts and omissions are willful, malicious and demonstrative of a reckless disregard for the Plaintiff's rights and well being.

**WHEREFORE**, Plaintiff respectfully request that judgment be entered against Defendant, for the following:

- a. An Order declaring Defendant's law practice of dunning consumers absent review of disputed debt to violate the Fair Debt Collection Practices Act;
- b. Statutory damages pursuant to 15 U.S.C. section 1692k;
- c. Actual damages;
- d. Statutory damages pursuant to New York General Business Law;
- e. Costs and reasonable attorney's fees pursuant to 15 U.S.C. section 1692k and New York General Business Law;
- f. Punitive damages pursuant to New York law; and
- g. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

  
Abraham Kleinman (AK-6300)  
KLEINMAN LLC  
626 RXR Plaza  
Uniondale, New York 11556-0626  
Telephone (516) 522-2621  
Facsimile (888) 522-1692

**DEMAND FOR JURY TRIAL**

Please take notice that Plaintiff demands trial by jury in this action.

  
Abraham Kleinman

**EXHIBIT A**



**RUBIN & ROTHMAN, LLC**

**EXHIBIT B**

February 11, 2011  
The Honorable David  
G. Souter, Justice  
U.S. Supreme Court, 111504

February 11, 2011


Dear Mr. Justice Souter:  
I am writing to you today to  
thank you for your letter of  
February 10, 2011.

I am writing to you today to thank you for your letter of February 10, 2011.

I am writing to you today to thank you for your letter of February 10, 2011.

I am writing to you today to thank you for your letter of February 10, 2011. Please be assured that I hope the Supreme Court's position is the right one and please have my warmest and kindest regards to the entire Court. I am writing to you today to thank you for your letter of February 10, 2011. Please indicate whether you would like to be contacted by me or by the Supreme Court's legal staff.

Sincerely,



David G. Souter

**EXHIBIT C**

# RUBIN & ROTHMAN, LLC

1100 W. 14th Street  
New York, New York 10011  
Tel: 212.512.1000  
Fax: 212.512.1001

www.rubinrothman.com  
info@rubinrothman.com

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**EXHIBIT D**

RONALD RUSSO  
350 Captains Drive  
West Babylon, NY 11704

March 31, 2011

Rubin & Rothman, LLC  
1787 Veterans Memorial Highway, Suite 32  
PO Box 9003  
Islandia, NY 11749

Re: Your File No. 0932099

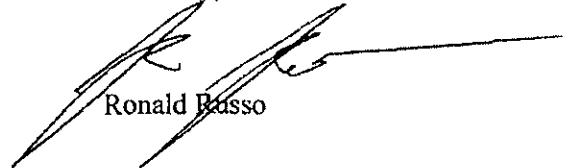
Dear Sir/Madam:

Thank you for your letter dated March 4, 2011.

Again, enclosed please find a copy of my original letter which requested that you advise whether this Citibank (South Dakota) N.A. debt is subject to an arbitration provision and that an attorney personally review the particular circumstances of this account.

Until such time that I receive information whether there is (a) an arbitration provision and (b) the attorney's name that personally reviewed this account, please continue to mark this matter as disputed.

Sincerely,



Ronald Russo

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robin & Rothman, LLC  
 1787 Veterans Memorial Hwy  
 PO Box 9003  
 Islandia, NY 11749

2. Article Number

(Transfer from service label)

7010 0290 0001 9003 9757

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1546

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



2010 0290 0001 9003 9757

ISLANDIA NY 11749

\$0.44	0704
\$2.80	
\$2.30	
\$0.00	
\$5.54	04/01/2011

Rubin E Rothman LLC  
PO Box 9003  
1787 Veterans Memorial Hwy  
Islandia NY 11749

**EXHIBIT E**



**EXHIBIT F**

SUFFOLK COUNTY FIRST DISTRICT COURT  
3105 VETERANS MEMORIAL HWY  
RONKONKOMA, NY 11779  
NOTICE OF STATUS CONFERENCE

=====

CITIBANK (SOUTH DAKOTA), N.A.

CEC 11 0003336( )

VS

RUSSO, RONALD

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Please be advised that more than six months has elapsed since the commencement of the above named action. No affidavit(s) of service has/have been filed nor has/have any answer(s) been submitted.

Accordingly you are directed to appear for a Status Conference on 12-09-2011 at 9:30AM in the CIVIL Part located at:

FIRST DISTRICT COURT  
3105 VETERANS MEMORIAL HWY  
RONKONKOMA, NY 11779

IF YOU FAIL TO APPEAR THE COURT MAY STRIKE THE ACTION FROM THE CALENDAR OR MAKE SUCH OTHER ORDER AS APPEARS JUST. (See Uniform Civil Rules for the District Court 212.14 (b)(3)).

SUCH AN ORDER MAY RESULT IN THE IMMEDIATE DISMISSAL OF THE ACTION LISTED ABOVE

Hon. Madeleine A. Fitzgibbon

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Supervising Judge

Dated: October 18, 2011

**EXHIBIT G**

DISTRICT COURT OF THE COUNTY OF SUFFOLK  
FIRST DISTRICT: RONKONKOMA PART

Index No.

CEC-11

012515

CITIBANK, N.A

Plaintiff

SUMMONS (COPY)

-against-

RONALD RUSSO

The basis of venue is:  
DEFENDANT'S RESIDENCE

Defendant(s)

Plaintiff's Residence:  
701 EAST 60TH ST NORTH  
SIOUX FALLS, SD 57117  
County of MINNEHAHA

CONSUMER CREDIT TRANSACTION

To the above named defendant(s):

YOU ARE HEREBY SUMMONED and required to appear in the First District Court of the County of Suffolk, Ronkonkoma Part, at the Office of the Clerk of the said Court at 3105 Veterans Memorial Highway Ronkonkoma, New York 11779, by serving an answer to the annexed complaint upon plaintiff's attorney, at the address stated below, or if there is no attorney, upon the plaintiff, at the address stated above within the time provided by law as noted below; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of the action.

Dated: Islandia, New York  
NOVEMBER 10, 2011

RUBIN & ROTHMAN, LLC  
Attorneys for Plaintiff  
1787 Veterans Highway  
Islandia, N.Y. 11749  
(631) 234-1500

NOTE: The law provides that:

(1) If this summons is served by its delivery to you personally within the County of Suffolk you must appear and answer within TWENTY (20) days after such service; or

(2) If this summons is served by delivery to any person other than you personally, or is served outside the County of Suffolk, or by publication, or by any means other than personal delivery to you within the County of Suffolk, you are allowed THIRTY (30) days after the proof of service thereof is filed with the Clerk of this Court to appear and answer excluding the day of filing.

DEFENDANT(S) ADDRESS:

RONALD RUSSO  
350 CAPTAINS DR WEST BABYLON, NY 11704

WE ARE ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

NYC DCA LLC. 1249720

Our File No. 0932099

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SZA

DISTRICT COURT OF THE COUNTY OF SUFFOLK  
FIRST DISTRICT: RONKONKOMA PART  
TIBANK, N.A.

Index No.

Plaintiff

-against-

COMPLAINT (COPY)

RONALD RUSSO

Defendant(s)

Plaintiff, by its attorneys, complaining of the defendant(s), alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. Defendant(s) resides in the county in which this action is brought; or transacted business in the county in which this action is brought in person or through an agent, or this cause of action arose out of said transaction. Plaintiff is not required to be licensed by the NYC Dept of Consumer Affairs because it is a passive debt buyer or the original creditor.
2. Plaintiff is a national bank located in South Dakota.
3. Defendant(s) used a credit card issued by plaintiff and agreed to make payments for goods and services charged and/or cash advances made upon such card.
4. Defendant(s) failed to make the payments due pursuant to such agreement, and \$ 3,920.09 is now due and owing to plaintiff from defendant(s), together with interest on \$ 3,920.09 from 11/08/10 at the rate of .00 % per annum.

AS AND FOR A SECOND CAUSE OF ACTION

5. Defendant(s) accepted plaintiff's statements without objection.
6. By reason thereof, an account was stated between plaintiff and defendant(s) in the aforesaid amount.

WHEREFORE, plaintiff requests judgment against defendant(s) in the sum of \$ 3,920.09, with interest on \$ 3,920.09 from 11/08/10 at the rate of .00 % per annum and the costs and disbursements of this action.

Dated: Islandia, New York  
NOVEMBER 10, 2011

RUBIN & ROTHMAN, LLC  
Attorneys for Plaintiff  
1787 Veterans Highway  
Islandia, N.Y. 11749  
(631) 234-1500

Deponent is an attorney associated with Rubin & Rothman, LLC. To the best of deponent's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the summons and complaint or the contentions therein are not frivolous as defined in section 130-1-(c) of the Rules of the Chief Adm. and the matter was not obtained through illegal conduct or in violation of 22 NYCRR 1200.41-a (DR 7-111).

Dated: NOVEMBER 10, 2011

\_\_\_\_\_/S/  
DAVID KOWALENKO

WE ARE ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

NYC DCA LIC. 1249720

Our File No. 0932099

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**EXHIBIT H**

EC- 88 Order on Motion

Docket/Index No. CEC 3336-11

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON PHILIP GOGLAS

Motion Date NOVEMBER 29, 2011

JUDGE

CITIBANK (SOUTH DAKOTA), N.A.

Plaintiff,

PEO'S/PLTF'S/PET'S ATTY:

AGAINST

RONALD RUSSO

DEFT'S/RESP'S/ATTY:

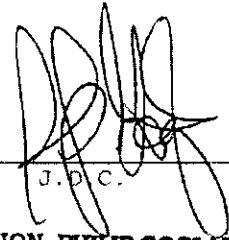
Defendant.

Upon the following papers numbered 1 to 2 read on this motion by defendant to dismiss for failure to serve process within 120 days after filing the summons and complaint Notice of Motion/Order to Show Cause and supporting papers 1 Notice of Cross Motion and supporting papers \_\_\_\_\_ ; Answering Affidavits and supporting papers \_\_\_\_\_ ; Replying Affidavits and supporting papers \_\_\_\_\_ ; Filed papers \_\_\_\_\_ Other exhibits 2 (and after hearing counsel in support of and opposed to the motion) it is,

**ORDERED** that this motion is granted without opposition and the complaint is dismissed (UDCA § 411).

Dated: DEC 1 2011

Mailed: DEC 0 6 2011

  
\_\_\_\_\_  
J.D.C.  
HON. PHILIP GOGLAS